

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 33995

204459

SF&L RAILWAY, INC.-ACQUISITION AND OPERATION
EXEMPTION-TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION-
BETWEEN LA HARPE AND PEORIA, IL

Finance Docket No. 33996

204460

KERN W. SCHUMACHER AND MORRIS H. KULMER
-CONTINUANCE IN CONTROL EXEMPTION-
SF&L RAILWAY, INC.

Finance Docket No. 34143

204461

KEOKUK JUNCTION RAILWAY CO.-ACQUISITION AND OPERATION
EXEMPTION-WEST END OF TOLEDO, PEORIA AND WESTERN RAILWAY
CORPORATION

MOTION TO STRIKE

ENTERED
Office of the Secretary

JAN 18 2002

Part of
Public Record

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January 18, 2002

Attorneys for Petitioners

Before the
SURFACE TRANSPORTATION BOARD

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SF&L RAILWAY, INC.-ACQUISITION AND OPERATION
EXEMPTION-TOLEDO, PEORIA AND WESTERN RAILWAY CORPORATION-
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EXEMPTION-WEST END OF TOLEDO, PEORIA AND WESTERN RAILWAY
CORPORATION

MOTION TO STRIKE

Petitioners^{1/} move that the Board strike the 2-page letter submission by Keokuk Junction Railway Co. (KJRY), filed January 10, 2002, in the above three proceedings. The KJRY submission was not prefaced by a motion for leave to file, and constitutes an impermissible reply-to-reply. This is contrary to the Board's rules, 49 CFR § 1104.13(c), as well as the Secretary's procedural decision served December 21, 2001.

However, if the Board nevertheless should accept the impermissible reply-to-reply, we offer the following in rebuttal thereto:

^{1/} County of McDonough, City of Macomb, and Joseph C. Szabo.

1. Contrary to KJRY's January 10, 2002 submission, our January 7, 2002 supplemental petition was not filed in F.D. No. 34143, but only in Finance Docket Nos. 33995-96.

2. The failure of KJRY to seek a stay of SF&L's December 10, 2001 takeover of the Peoria-LaHarpe line and, moreover, for KJRY to oppose petitioners' request for stay, combined with the absence of opposition from Toledo, Peoria & Western Railway Corporation (TPW), along with other factors, permits the inferences made by petitioners in their January 7, 2002 supplemental petition.

3. Petitioners did not have a copy of the purchase agreement between KJRY and TPW prior to filing their January 7, 2002 supplemental petition. Attached hereto as Exhibit 1, are the cover and first page of KJRY's transmission, confirming that KJRY waited until after the 5 P.M. closing of the Board's offices. Moreover, the December 19, 2001 so-called "agreement" is not the entire agreement or document(s) sought by petitioners, and petitioners are not in possession of the underlying purchase agreement.

4. KJRY's argument that the Peoria-La Harpe and La Harpe-Fort Madison line segments are not interrelated, or do not stand or fall together, inasmuch as there is no pending petition to revoke the latter exemption, is an illogical argument and also is incorrect. Moreover, the Board has a duty to the public apart from procedural manipulation.

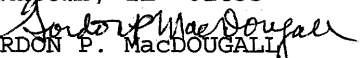
CONCLUSION

The Board should strike KJRY's January 10, 2002 reply-to-reply.

Respectfully submitted,

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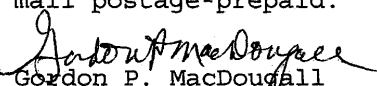
January 18, 2002

Attorneys for Petitioners

Certificate of Service

I hereby certify I have mailed a copy of the foregoing upon all parties of record by first class mail postage-prepaid.

Washington DC


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FACSIMILE TRANSMITTAL

DIRECT DIAL NUMBER

202-274-2878

DATE: JANUARY 7, 2002

FACSIMILE NUMBER

202-654-5611

TO	FIRM NAME	TELEPHONE NUMBER	FACSIMILE NUMBER
Gordon MacDougall, Esq.	Gordon P. MacDougall, Esq.	202-223-9738	202-331-8343

FROM	OPERATOR NAME If all pages are not received, please call:	CLIENT NUMBER	MATTER NUMBER
Thomas J. Healey	Joyce B. Lanham 202-274-2956	009596	105289

SUBJECT: CONFIDENTIAL 12/19/01 AGREEMENT FOR SALE (TP&W TO KJRY)

NUMBER OF PAGES INCLUDING THIS COVER SHEET = 2116

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*** COMMENTS ***

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January 7, 2002

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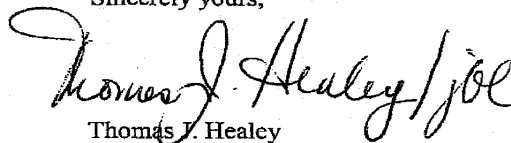
Dear Gordon:

Pursuant to our conversation earlier today, enclosed is a copy of the December 19, 2001 agreement governing the purchase by Keokuk Junction Railway Co. ("KJRY") of the La Harpe to Lomax segment of the Toledo, Peoria and Western Railroad Corp. ("TP&W"), with incidental trackage rights to Ft. Madison.

Regarding the confidentiality of this document, we have not prepared a traditional Protective Order with attendant Undertakings because we were not required to file the agreement with the STB. Thus, I have no Undertaking for you to sign. However, you should consider yourself bound by the confidentiality provisions contained in this agreement. You should not make any disclosure of the terms of this document, even to your client, without first reviewing your proposed disclosure with counsel for both TP&W and KJRY. Additionally, should you believe it necessary to bring any of the provisions of this agreement to the attention of the STB, you should do so only under the Board's established procedures for handling "Highly Confidential" information.

If you have any questions regarding these matters, please contact me or Bill Mullins at your earliest convenience.

Sincerely yours,



Thomas J. Healey

Enclosure

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EXHIBIT 1
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